

### **Examiner's Amendment**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Gregory M. Zinkl on 11/17/08.

The application has been amended as follows:

In the **Specification**:

On Page 53, substitute the following paragraph for paragraph [00318]:

[00318] The example is based on the consideration that nuclear YB-1 should bind as a transcription factor to the Y-box (CAAT sequence) within the *mdr1* promoter (engl. multiple drug resistance promoter). In order to detect this, a so-called EMSA analysis (electrophoretic mobility shift assay) was performed. In connection therewith, nuclear protein is isolated and subsequently 1-10 µg protein is incubated together with a short DNA fragment (oligo) at 37° C. In order to determine nuclear YB-1, the following oligonucleotide was used: *mdr1* promoter in contrast to U203 (Position -86 to -67): TGAGGCTGATTGGCTGGGCA (SEQ ID NO:1) (~~the X-box is underlined~~).

In the **Claims**:

Art Unit: 1636

This application is in condition for allowance except for the presence of claims 150-177, directed to a non-elected invention non-elected **without** traverse.

Accordingly, claims 150-177 have been cancelled.

Cancel Claims 150-177.

In Claim 188, line 2, change "polypeptides" to --polypeptide--.

In Claim 189, line 2, change "polypeptides" to --polypeptide--.

**Substitute Specification:**

The Substitute Specification filed 8/14/08 is acceptable and has been entered.

The provisional obviousness type double patenting rejection of new claims 179-196 over claims 1-53 co-pending application 10/579,543 is still applicable. Both sets of claims recite recombinant adenoviruses, wherein upon infection of a eukaryotic cell, the adenovirus expresses a first polypeptide comprising an E1B polypeptide, an E4 polypeptide or an E1B and E4 polypeptide prior to expressing a second polypeptide comprising an E1A polypeptide. However, since this provisional rejection would be the only remaining rejection, said rejection is withdrawn. A provisional double patenting rejection will be maintained in the '543 application until the instant application issues as

Art Unit: 1636

a patent and said provisional rejection will be converted to a regular double patenting rejection at that time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Guzo, Ph.D., whose telephone number is (571) 272-0767. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Low, Ph.D., can be reached on (571) 272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 18, 2008

/David Guzo/  
Primary Examiner  
Art Unit 1636